

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

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In the Matter of)

Amendment to the Commission's)
Rules Regarding a Plan for Sharing)
The Costs of Microwave Relocation)

WT Docket No. 95-157

To: The Commission

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REPLY COMMENTS
OF
WILLIAMS WIRELESS, INC.

WILLIAMS WIRELESS, INC.

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Date: June 7, 1996

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**REPLY COMMENTS
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WILLIAMS WIRELESS, INC.**

Williams Wireless, Inc. ("WWI"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits these Reply Comments concerning the Comments filed in response to the Further Notice of Proposed Rule Making ("Further Notice") in the above-captioned proceeding. This reply is limited to the Commission's proposal to allow microwave incumbents to participate in cost-sharing. As demonstrated below, the concern expressed by certain Personal Communications Services ("PCS") interests that participation by microwave incumbents in the cost-sharing measure will result in costly system upgrades for incumbents at the expense of PCS licensees is unfounded. Cost-sharing should be available to microwave incumbents that self-relocate to facilitate the deployment of PCS, just as it is available to PCS licensees.

I. INTRODUCTION

1. As discussed in detail in WWI's Comments in this proceeding, WWI owns a 4,000 mile 2 GHz microwave system used by Williams Natural Gas Company, Texas Gas Transmission Company and Transcontinental Gas Pipeline Company. The system consists of 132 microwave links, all of which operate in either the A, B or C frequency blocks allocated for PCS.

2. In its Comments, WWI endorsed the Commission's tentative conclusion that microwave incumbents who pay to relocate one or more of their own microwave links should be allowed to participate in the relocation cost-sharing plan now available to PCS relocators. WWI described -- based upon its own experience -- how participation by microwave incumbents in cost-sharing would facilitate prompt, system-wide relocations of extensive microwave networks and foster the timely deployment of PCS.^{1/}

3. Consistent with WWI's position, other Comments submitted on behalf of microwave incumbents expressed virtually unanimous support for the Commission's proposal to confer cost-sharing rights upon incumbents.^{2/} For

^{1/} WWI at 7-9.

^{2/} See, e.g., American Petroleum Institute at 1-2; American Public Power Association at 5; the Association of American Railroads at 2; the Association of Public-Safety Communications Officials-International, Inc. at 2 n.3; South Carolina Public Service Authority at 2; the Telecommunications Association ("UTC") at 5; Tenneco Energy ("Tenneco") at 4.

instance, UTC expressed its belief that this measure would promote the Commission's stated goals of facilitating the deployment of PCS and encouraging the relocation of microwave systems.^{3/} Similarly, Tenneco noted that application of the cost-sharing plan to microwave incumbents in cost-sharing would facilitate systemwide relocation of larger microwave systems which have many links that are "out-of-band" for A or B block licensees.^{4/}

4. Indeed, even some PCS entities supported the proposed participation of microwave incumbents in the cost-sharing plan, provided that certain safeguards are implemented.^{5/} AT&T, for example, argued that such cost-sharing would serve the public interest by enabling microwave incumbents to redesign their systems on a comprehensive, rather than a piecemeal, basis while minimizing the transaction costs associated with the negotiation of multiple relocation agreements.^{6/} AT&T added that "the potential for abuse of this process by incumbent microwave users is limited," as the monetary cap on reimbursement should prevent incumbents from "goldplating."^{7/}

^{3/} UTC at 6.

^{4/} Tenneco at 4.

^{5/} See AT&T Wireless Services, Inc. ("AT&T") at 5; Cellular Telecommunications Industry Association at 7.

^{6/} AT&T at 6.

^{7/} Id.

5. By contrast, certain other PCS interests opposed the application of the cost-sharing plan to microwave incumbents. BellSouth Corporation ("BellSouth") contended that if microwave incumbents have reimbursement rights, they will no longer choose to enter relocation agreements with PCS licensees and will, instead, grant themselves more generous relocation packages than PCS relocators would have offered.^{8/} The Personal Communications Industry Association ("PCIA") -- while willing "in principle" to consider microwave participation in the cost-sharing plan -- argued that, in the absence of a PCS licensee on the other side of the negotiating table, there will be no assurance that the incumbent will minimize relocation costs.^{9/} In addition, Sprint Spectrum L.P. ("Sprint") claimed that permitting microwave incumbents to participate in the cost-sharing plan would enable incumbents who would not suffer harmful interference from PCS operations to gain the right to relocation at the expense of PCS licensees.^{10/}

II. REPLY COMMENTS

A. Microwave Incumbents Who Participate in the Cost-Sharing Plan Will Have Incentives to Minimize Costs.

6. Contrary to the assertions of certain PCS entities, there are a number of reasons why the amounts expended by microwave incumbents to self-relocate would not be unreasonable or inflated. First and foremost, a microwave incumbent paying

^{8/} BellSouth at 7.

^{9/} PCIA at 6.

^{10/} Sprint at 2.

to relocate its own microwave links will bear the significant risk that there will be no subsequent PCS licensee whose deployment would have required relocation of the incumbent's system. In other words, like PCS relocators, microwave incumbents would not be able to obtain reimbursement under the cost-sharing plan unless and until a subsequent PCS licensee is identified whose operations would have interfered with those of the incumbent but for the relocation. Thus, there is no guarantee that an incumbent who self-relocates will eventually be reimbursed for its relocation costs. This provides a strong incentive for incumbents to limit relocation expenditures to those that are reasonably necessary. Simple economic realities will prevent the great bulk of incumbents from installing "gold-plated" systems.

7. The reimbursement cap of \$250,000 per link also will further inhibit the ability of microwave incumbents to unreasonably upgrade their systems at the expense of PCS licensees. As an additional safeguard, WWI supports UTC's recommendation that, for incumbents who have already relocated one or more links through agreement with a PCS licensee, there should be a rebuttable presumption that the amount expended for self-relocating a link in the same system is reasonable if it does not exceed the lesser of the cost-sharing cap or the average relocation cost for the PCS-relocated links.^{11/}

^{11/} See UTC at 7-8.

8. Even in the absence of negotiations, microwave self-relocation may ultimately be more cost-effective for PCS licensees. As AT&T points out, self-relocation will not entail the considerable transactional costs typically incurred by both incumbents and PCS licensees in negotiating complex relocation agreements.^{12/} Furthermore, through avoidance of a time-consuming negotiation process, incumbent self-relocation will enable PCS licensees to promptly commence operations and, as a result, to obtain more immediate returns on their investment. Most PCS licensees would thus appear to benefit significantly from an early, unilateral relocation by a microwave incumbent. Should the Commission deny incumbents the right to participate in the cost-sharing plan, this benefit to PCS licensees would constitute unjust enrichment at the expense of self-relocating incumbents. Surely no legitimate public interest would be served by allowing PCS relocators to benefit from cost-sharing, while denying that right to microwave incumbents who clear their own paths in order to facilitate the deployment of PCS.

9. Finally, like PCS relocators, microwave incumbents will be required to document relocation costs for submission to the clearinghouse administrator. In light of the significant number of relocations that already have occurred, PCS licensees should have no trouble identifying costs that appear excessive or unreasonable.

^{12/} See AT&T at 6.

Any problems that may arise can be addressed by the dispute resolution procedures adopted under the PCS cost-sharing plan.^{13/}

B. Self-Relocation Will Complement, Rather Than Supplant, Negotiated Relocations.

10. Some PCS licensees, such as BellSouth, are apparently concerned that if microwave incumbents have reimbursement rights through the cost-sharing plan, they will no longer engage in voluntary negotiations with PCS licensees. These concerns are unwarranted. To begin with, some incumbents will likely be unwilling or financially unable to bear the risks involved with paying for their own relocations pending the possible identification of an interfering PCS licensee at some unknown point in the future. In addition, as Western Wireless Corporation ("WWC") acknowledges in its Comments, some incumbents simply will prefer to negotiate rather than participate in a cost-sharing measure through unilateral relocation.^{14/}

11. Moreover, if some incumbents self-relocate instead of entering into negotiations with PCS licensees, no harm will flow to PCS licensees as a result. Rather, as shown above, PCS licensees will benefit from the prompt deployment of their systems, coupled with substantially reduced transaction costs and a cap on reimbursement.

^{13/} See id.

^{14/} WWC at 6.

III. CONCLUSION

12. Participation by microwave incumbents in the cost-sharing plan is fundamental both to the systemwide relocation of large microwave networks and the prompt deployment of PCS. The overwhelming support conveyed for this measure by microwave incumbents -- and even some PCS licensees -- belies the claim of other PCS entities that incumbents will somehow abuse the option of self-relocation. There are ample safeguards in place to protect the legitimate interests of PCS licensees while allowing fair reimbursement to microwave incumbents that self-relocate.

WHEREFORE, THE PREMISES CONSIDERED, Williams Wireless, Inc. respectfully submits the foregoing Reply Comments and urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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